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Treasure Room

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June 20



Harvard Law Record

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Harvard Law Record

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Hearsay

Arthur John Keeffe in the December issue of the *American Bar Association Journal*, at page 1330, raises the question: "How stupid can you be, just to take the school law review in which there is not a chuckle from cover to cover?" The question was prompted by his summary of several events reported in the pages of the RECORD. The *Journal* reprinted two stories the RECORD published about the beatnik poets who came to the Harvard Law School Forum last spring.

Naturally the editors of the RECORD won't quarrel with his assertion that anyone concerned with the Harvard Law School cannot afford to miss the RECORD, but it is pleasant to report that most people concerned with Law School do read the RECORD.

This fall more students purchased subscriptions than ever before; the business staff was almost embarrassed by running out of subscription cards. But the students are numerically overshadowed by the thousands of alumni who regularly read the RECORD.

Judging by our daily mail, alumni read the RECORD with nearly the same diligence they apply to a brief or a motion. As long as they read it, it will be possible for the RECORD to continue to present a fair and objective presentation of what happens in the Law School and afford the only medium of opinion which is open to all students and to all alumni.

CALENDAR

Saturday, February 6

The HARVARD LAW FORUM will present Abdel Kader Chanderli, representative for the Algerian Front of National Liberation, at 8 p.m. in the Lowell Lecture Hall. Panelists will be on hand to challenge his position.

Tuesday, February 9

The YOUNG REPUBLICAN CLUB will hold a meeting for election of officers for the coming year in Harkness Commons at 1:30 p.m.

Current Events

The play, "Oh Dad, Poor Dad," has returned to the Agassiz Theater for a short run.

Weekend Entertainment

BRATTLE — Shane - 3:30 (Sat), 5:30, 7:30, 9:30.

UNIVERSITY — Beloved Infidel - 2:36, 5:53, 9:04.

BOSTON

EXETER — The Mouse That Roared - 2:25, 4:10, 6, 7:45, 9:35.

TELEPIX — Grand Illusion - 11:30, 1:21, 3:25, 7:35, 9:45.

UPTOWN — Happy Anniversary - 12:40, 3:45, 6:50, 9:55; Beggar's Opera - 11, 2, 5:10, 8:10.

UNIVERSITY

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Also Selected Short Subjects

Now — Saturday

Forum Airs Algerian Crisis

"Rebellion in Algeria," a topic as timely as the news of the last week itself, will be the subject of the Harvard Law Forum this Saturday at 8 p. m. at the Lowell Lecture Hall. Abdel Kader Chanderli, representative in the United States for the Algerian Front of National Liberation, will present the case for a free Algeria to be headed by his party's shadow government now operating out of Tripoli.

Challenging Mr. Chanderli will be Professor Mark Karp of the School of African Studies at Boston University and Professor Rupert Emerson of the Harvard Government Department. The program will be moderated by Professor Derek Bok of the Law School.

Mr. Chanderli was educated at the University of Paris School of Political Science, where he specialized in Modern History and

of U. N. E. S. C. O. in Paris. He has been Chief of Operations for his party in the United States since 1956. Mr. Chanderli has been mentioned as the logical choice for the post of Algerian Foreign Minister should the Algerian Front of National Liberation succeed in driving the French from Algeria.

Record Elections

Robert C. Berry, President

The Harvard Law Record Corporation has elected a new Board of Directors for the spring term. Serving as Chairman of the Board and as its new president is Robert C. Berry, 2L, St. Joseph, Missouri.

The other officers and members of the Board include Charles G. Kadison, 2L, Somerville, Mass., Editorial Manager; Sydney S. Traum, 2L, Belle Harbor, N. Y., Business Manager; Charles H. Baron, 2L, Philadelphia, Pa., News Editor; Russell A. Winslow, 2L, West Newton, Mass., Features Editor; and Benjamin M. Gottlieb, 2L, Fall River, Mass., Photography Editor. Roy F. Barnitt Jr., 3L, Jersey City, N. J. and Robert E. Manley, 3L, Cincinnati, Ohio, both past presidents of the RECORD, will continue as Members of the Board in the capacity of Advisory Editors.

In addition to the above, Peter J. McGinn, 3L, Riverside, R. I., has been named Copy Editor. Morris J. Amitay, 2L, New York, N. Y., is the Assistant News Editor.

Associate Board of Editors

The following third-year students have been named to an Associate Board of Editors: Ellis A. Horwitz, Philadelphia, Pa.; Richard C. Hotvedt, Wauwatosa, Wis.; Herbert H. Kaiser, Monticello, Ill.; David N. Levinson, Middletown, Del.; Paul C. Murstein, Jamaica, N. Y.; Morton Rosenberg, Brooklyn, N. Y.; and David L. White, Athens, Ohio.

The new president, Robert C. Berry, is a graduate of the University of Missouri and a member of Chancery Club. While at the University he was Editor-in-Chief of the student newspaper.



Mr. Chanderli

Sociology. Prior to his arrival in the United States he was a news correspondent for leading papers in China, Europe, the Middle East, and Latin America. He has also edited and published a magazine in Rome and a daily newspaper in Shanghai. From 1949 to 1955 he was the Chief of Public Relations Division

Williston Winners

Williston Competition winners have been announced for the semi-final problems. The three winning teams will compete in the final round later in the spring.

All the winners in this round of the competition are third-year men. Triumphant in Problem No. 1 are Zane A. Thompson, Bridgton, Maine; Matthew B. Weinberg, Beechhurst, New York; James G. Follis, San Francisco, California. For Problem No. 2, the winners are Peter W. Kilborn, Falmouth Foreside, Maine; Leonard M. Nelson, Portland, Maine; Charles P. Barnes, Cambridge, Massachusetts; and Peter R. Haje, Malverne, New York. For Problem No. 5 are Robert H. S. French, Newton, Massachusetts; Walter G. Van Dorn, Cambridge, Massachusetts; William J. Jones, South Orange, New Jersey; Melvin M. Shralow, Philadelphia, Pennsylvania.

Plans are also underway for the beginning competition for second-year students, which will begin the latter part of February. Although the competing unit is a team of four, those interested may enter individually and be assigned to teams.

The Williston Competition is named in honor of Samuel L. Williston, Dane Professor of Law, Emeritus. The Competition, in operation since 1951, is designed to provide experience in drafting, legal writing and problem solving not immediately connected with litigation. Substantial cash prizes will be provided for each of the winning teams in the Final Round.

The Walls May Tumble

"Are you Walter Gropius?" blurted an underwear-clad law student after the white-haired man invaded his chamber to interrogate him on life in Graduate Center dormitories.

Because of complaints about noise and crowded conditions in the modern Law School dormitories, Dean Erwin N. Griswold summoned the world famous architect to study the buildings and to make recommendations for their improvement.

The buildings were constructed with intentional austerity shortly after the Second

World War because the Law School needed more living space but lacked the funds to construct ideal accommodations. Mr. Gropius, who designed the Graduate Center, warned that noise would be a genuine problem, but the Law School chose to have imperfect buildings rather than no new dormitory space.

Mr. Gropius has not made his report, but it is contemplated that he may suggest anything from gutting the interiors and reconstructing them to a series of minor anti-noise alterations. In either event, Dean Griswold has directed that they be made "eminently satisfactory."

Prior experiments with anti-noise measures have not been successful.

Forum Selects Officers

The Harvard Law School Forum has a new slate of officers for the spring term: David N. Levinson, 3L, Middletown, Del., president; Alex R. Seith, 3L, Aurora, Ill., first vice president; Richard E. Smith, 2L Allston, Mass., second vice-president; Alfred Lawrence-Toombs, 3L, London, England, secretary; and Jerome E. Weinstein, 3L, Marblehead, Mass., treasurer. Charles S. Blankstein, 3L, Greensboro, N. C. will serve as a member of the Board of Directors.

Eating Clubs Announce

The newly-elected president of Lincoln's Inn Society is P. Cameron DeVore, 2L, Spokane, Washington. Other new officers are Bevis N. Longstreth, Jr., 2L, Princeton, N. J., vice-president; Paul DeF. Hicks, Jr., 2L, Rye, N. Y., secretary; and Jeremiah Luxemburger, 2L, Cambridge, Mass., treasurer.

Members of the Board Governors from the second-year class will be Wiley Dinsmore, Cincinnati, Ohio; Albert D. Leahy, Jr., Claremont, N. H.; Donald P. Madden, Cambridge, Mass.; and Walter C. Hartridge, II, Savannah, Ga. First-year members of the Board will be Albert J. Beveridge, III, Hingham, Mass., and Samuel Insull, III, Geneva, Ill.

James R. Flaker, Rochester, N. H. is the newly-elected treasurer of the Chancery Club. The club will hold elections for the remaining executive positions in March.

'Discrimination — We've Gotten Rid of That'

Governor Luther Hodges proudly told how his moderation led North Carolina away from the "tragic path" of states trying to massively resist desegregation. Speaking to the Law School Forum last Friday night, he dubbed the 1954 Supreme Court decision a "drastic change of the judicial mind." His task of calming heated passions was worsened by Southern outrage at the unforeseen "complete reversal" of the "separate-but-equal" doctrine set forth in the 1896 case of *Plessy v. Ferguson*.

Putting criticism aside, Governor Hodges described how, in 1954-1955, he moved swiftly to preserve public schools and comply with the Court. He persuaded the legislature to repeal laws requiring segregation and to empower local school boards to assign pupils according to "reasonable and valid" standards. After a Federal District Court found the pupil assignment law satisfactory, it was copied by other states. Some North Carolina Negroes have been assigned to white schools under the law.

Safety Value

At the Governor's urging the legislature voted 168-to-2 for a two-part "safety valve" statute. First, parents objecting to mixed schools can receive state aid to pay private school tuition costs for their children. Second, by a majority vote within a school district, citizens can close the schools. To date no parent has asked aid and no school has been closed.

When Law School Professor Mark DeWolfe Howe, a panelist, called the North Carolina laws "delaying tactics," Governor Hodges replied that "Judge Parker said the Supreme Court did not require integration, it only forbade discrimination. We've gotten rid of that."

Professor Howe challenged the Governor's claim that the desegregation decision was an unfair surprise to the South. "*Plessy v. Ferguson* can be read as conditional. If facilities are *really* equal, they may be separate," said Professor Howe. He concluded that after fifty-eight years in which separateness meant inequality one must be "more legalistic than the lawyers" to think the Supreme Court should have ignored experience.

Law School Professor Albert M. Sacks, another panelist, recalled the series of Supreme Court decisions pointing toward the 1954 school case which he admitted was "a change but not a sudden change." Answering criticisms of the 1954 decision echoed by Governor Hodges, Professor Sacks said the Court's reference to sociology and psychology was a "grievous error" but irrelevant. "Legal reasoning in the opinion supported the result," he added. He rejected the Governor's con-



Governor Hodges and Moderator Graham

tention that segregation, like apportionment, is a "political question" which "judicial self-restraint" should have left to Congress.

"The Supreme Court has always safeguarded the 'equal protection' assured by the 14th amendment," said Professor Sacks.

Multi-racial

Panelist Eric Dennard, superintendent of schools in Newton, Mass., called discrimination "a multi, not a bi-racial, issue affecting North and South alike." Governor Hodges and the other panelists forcefully agreed.

Governor Hodges expressed confidence that "over a period of time" the nation will outlive the distress of racial conflict. He asked to be spared the excesses of people seeking to bring the full power of the federal govern-

ment "down upon the heads of what they call backward and unruly states."

He pleaded for a "spirit of moderation" defined by Judge Learned Hand as "the temper which does not press a partisan advantage to its bitter end."

Dean Edward Kidder Graham, of Boston University and formerly of North Carolina, was moderator.

— Seith

General Trudeau to Speak

Lieutenant General Arthur G. Trudeau is to speak at 8:00 o'clock on Tuesday evening, February 9, in the Ames Court Room at the Law School. His subject will be "Army Research and Development — Crucible for the Future."

General Trudeau is Chief of Research and Development for the Department of the Army, a post he has held since April of 1958. After graduation from the United States Military Academy in 1924 and prior to World War II he served with various engineer units. In 1942, General Trudeau became Chief of Staff of the Engineer Amphibian Command and throughout the war and postwar years he served in various command posts in the Pacific as well as completing special missions to other parts of the world. He came to his present post from Korea where he was Commanding General for the First Corps.

All law students, faculty, and Law School wives are cordially invited to hear General Trudeau. The event is sponsored by the Harvard Law Wives.

Civic League Offers Reward

The Massachusetts Civic League is sponsoring an essay contest on the following topic: "How Best, Within Constitutional Limits, Can the Public Welfare Be Protected During Major Industrial Disputes?"

The prize is \$100. The offer is open only to students of a Massachusetts law school. The paper should not exceed 2,500 words and must be typewritten and double-spaced. It should be mailed to the office of the Massachusetts Civic League, 53 State Street, Boston 9, not later than April 15, 1960.

Corporation Managers — Discretion in all Things

A new book, entitled *The Corporation in Modern Society*, has been published this past week by Harvard University Press. Edited by Professor Edward S. Mason, Harvard economist, this study looks at the problems of the modern large corporation through the comments of fourteen men from various fields, including lawyers, economists, political scientists and sociologists.

Two men from the faculty of the Harvard Law School are among the contributors to this book, which is supported by the Fund for the Republic. Professors Kingman Brewster and Abram Chayes concern themselves mainly with the problem: How is the wide scope of corporate managerial discretion to be limited?

Rule of Law

In the study, Professor Chayes proposes a "rule of law" that would rationalize the use of corporation power, which, in his terms, is "the biggest center of non-governmental power in our society." Groups affected by decisions of corporations, he asserts, should have legal means to make their wants known. It is not enough to rely on the conscience or benevolence of those who wield the power.

Professor Brewster sees a need to curb the power that corporations have over administrative employees, especially those employees whose "horizontal mobility" is limited by salary plans that include "deferred compensation and stock-warrant and retirement plans with a 'you can't take it with you' feature." These, he says, raise barriers "to mobility of talent and capital" and should be investigated with perhaps more direct legal action being the result.

Contributors Cited

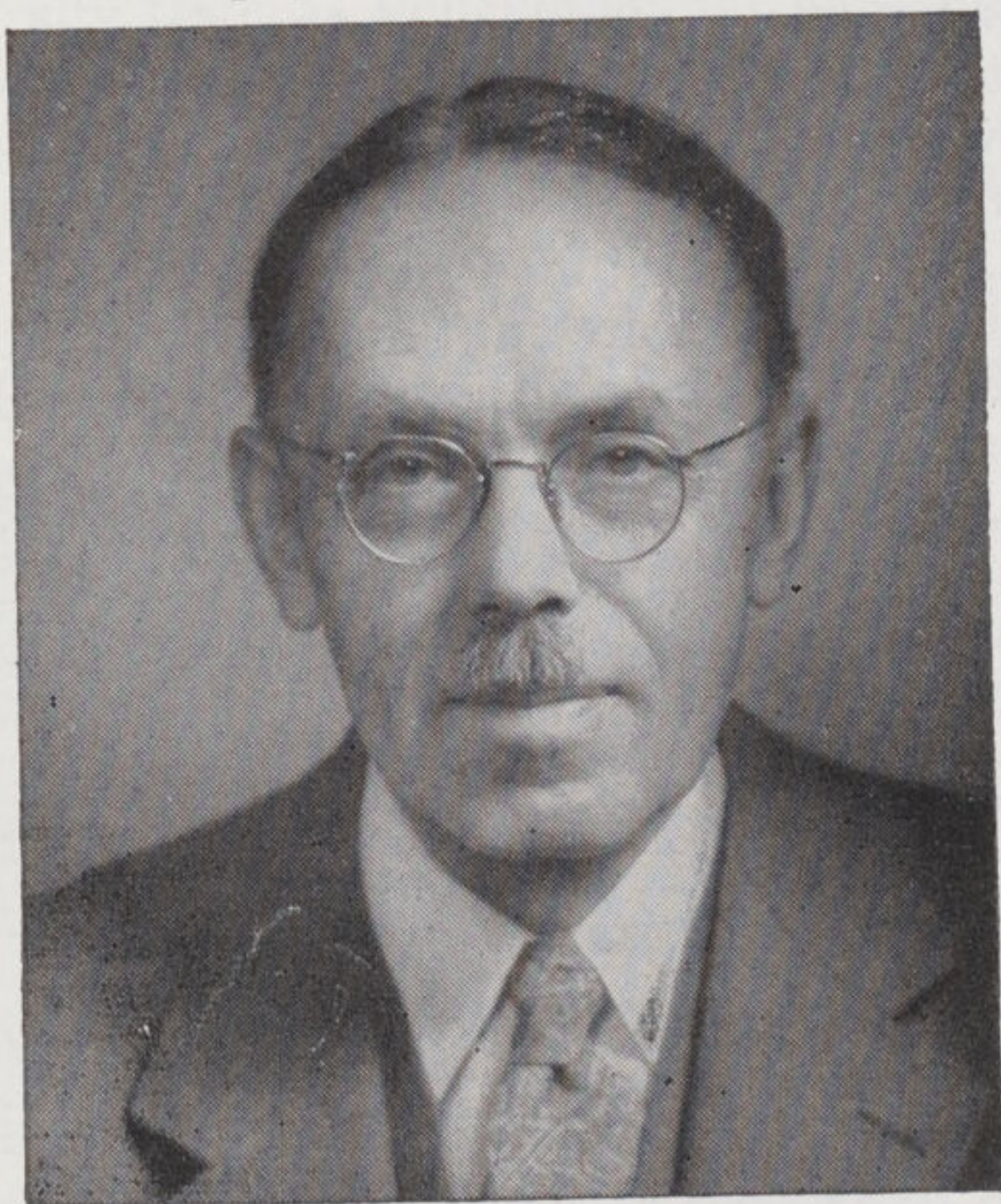
Other men contributing to this study include Alexander Gerschenkron, Carl Kaysen, John Lintner and Raymond Vernon of Harvard; Neil W. Chamberlain of the Ford Foundation; C. A. R. Crosland, a former member of the British Parliament; Earl Latham of Amherst College; Norton E. Long of Northwestern University; Eugene V. Rostow of Yale University; Jacob Schmookler of the University of Minnesota; and W. Lloyd Warner of Michigan State University.

Maguire — Many Tests And Puzzling Applications

John MacArthur Maguire, Royall Professor of Law, Emeritus, has written a new book. Published by Little, Brown & Company, its title is *Evidence of Guilt: Restrictions Upon Its Discovery or Compulsory Disclosure*.

In it, Professor Maguire examines the five important protective rules of evidence; the rules against (1) self-incrimination, (2) involuntary confessions, (3) unreasonable search or seizure, (4) wire-tapping and other communications interception, and (5) the use of confessions obtained during illegal detention (the *McNabb-Mallory* doctrine).

The author stresses the need for a consideration of these privileges. "So much and such violent popular discussion of these pro-



Professor Emeritus Maguire

TECTIVE rules is occurring, and they are being put to so many tests and puzzling applications, that a technical treatise of fair comprehensiveness about them seems timely. Hence this book."

Professor Maguire illustrates each rule by a hypothetical fact situation. Then it is analyzed by the use of a series of questions. These deal with the nature of and the justification for each restrictive doctrine, and the circumstances necessary to make it operative; the kinds of pressure, governmental or otherwise, permitted as discouragements to the use of each privilege; the extent to which

violations of each doctrine lead not only to the exclusion of evidence directly obtained by the proscribed conduct but also to the exclusion of evidence obtained indirectly thereby; the degree, if any, to which intelligent official action can forestall, limit, or terminate the application of each rule; and the sort of conduct by a claimant of protection which will render the rule unavailable to him.

Wire Tapping Examined

Much attention is given to the invocation of the Fifth Amendment in Congressional hearings and judicial proceedings. Special examination is made of the matter of wire-tapping and the Federal Communications Act of 1934. This statute is analyzed for the semantic difficulties that exist in its interpretation, with discussion, for instance, of what constitutes "interception" of communications.

Professor Maguire retired from teaching at the Law School in 1957. He had been here since 1923. During that time he was best known for his third-year course in Evidence. He is also the co-editor, with Professor Edmund Morgan, of *Cases on Evidence*, first published in 1934, and the author of *Evidence: Common Sense and Common Law*, which appeared in 1947.

McNaughton Pleads Fifth Amendment

Professor John T. McNaughton will deliver a paper entitled "The Privilege Against Self-Incrimination: Its Constitutional Affection, *Raison d'Etre*, and Miscellaneous Implications," on Saturday, February 20, at the International Conference on Criminal Law Administration at the Northwestern University School of Law.

Appearing with Professor McNaughton in a panel discussion of the subject will be New Hampshire Attorney General Louis C. Wyman and a number of foreign participants. The conference is one of a series of conferences on "Preservation of a Free Society Under Law," conducted by the Northwestern University School of Law in observance of its one hundredth anniversary. The present conference on Criminal Law Administration was made possible by a grant from the Ford Foundation.

Dean Erwin N. Griswold will participate in the May conference of the series.

Casner Will Speak From New York to Chicago

Professor A. James Casner will be visiting New York and Chicago in the near future, addressing various groups while he is in those cities.

On February 10, he will address two thousand and trust officers gathered in New York's Waldorf-Astoria for the mid-winter meeting of the American Bankers' Association Trust Division. These officers are generally men with legal and banking experience who manage countless private and public trusts throughout the United States. Many trust officers have written Professor Casner about the legal complexities of their work. His forty-five-minute speech, titled "Fractional Share Marital Deduction Gifts," was prompted by their recent inquiries.

In a Chicago speech on February 19, Professor Casner will shift attention to practicing lawyers. He will tell the Harvard Law School Society of Illinois about recent developments at the Law School, particularly the work of the faculty committee studying revision of the curriculum. As committee chairman Professor Casner has found comments of alumni helpful in preparing the report now being readied for analysis by the full faculty. The last curriculum study of like scope was made at the end of World War II. Another is not expected before the mid-1970s.

While in Chicago, Professor Casner will attend the annual banquet for the Fellows of the American Bar Foundation, a charitable organization which encourages legal research. The Foundation is currently sponsoring a study of congestion in the courts. Outstanding men in the legal profession become Fellows by invitation. The only other fellow on the Harvard Law Faculty is Dean Erwin Griswold.

Alumni Notes

LL.B. '30 — John Barker, Jr., and Vincent V. R. Booth have been promoted to top-level jobs at the New England Mutual Life Insurance Company in Boston. Barker has been named agency vice president and Booth has become general counsel.

LL.M. '38, LL.B. '43 — Lucien R. LeLièvre has become a member of the firm of Hill, Betts & Nash with offices at 26 Broadway, New York City, and in Washington and Paris.

LL.B. '48 — Milton Prigoff has been appointed Magistrate in the Municipal Court, Borough of Cresskill, Bergen County, New Jersey.

LL.B. '50 — Wallace E. Cowan has become a member of the firm of Stroock, Stroock & Lavan with offices at 61 Broadway, New York City, New York.

LL.B. '58 — Stephen S. Rubins has opened a law office at 234 East Pine Avenue, Wildwood, New Jersey.

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January Events:

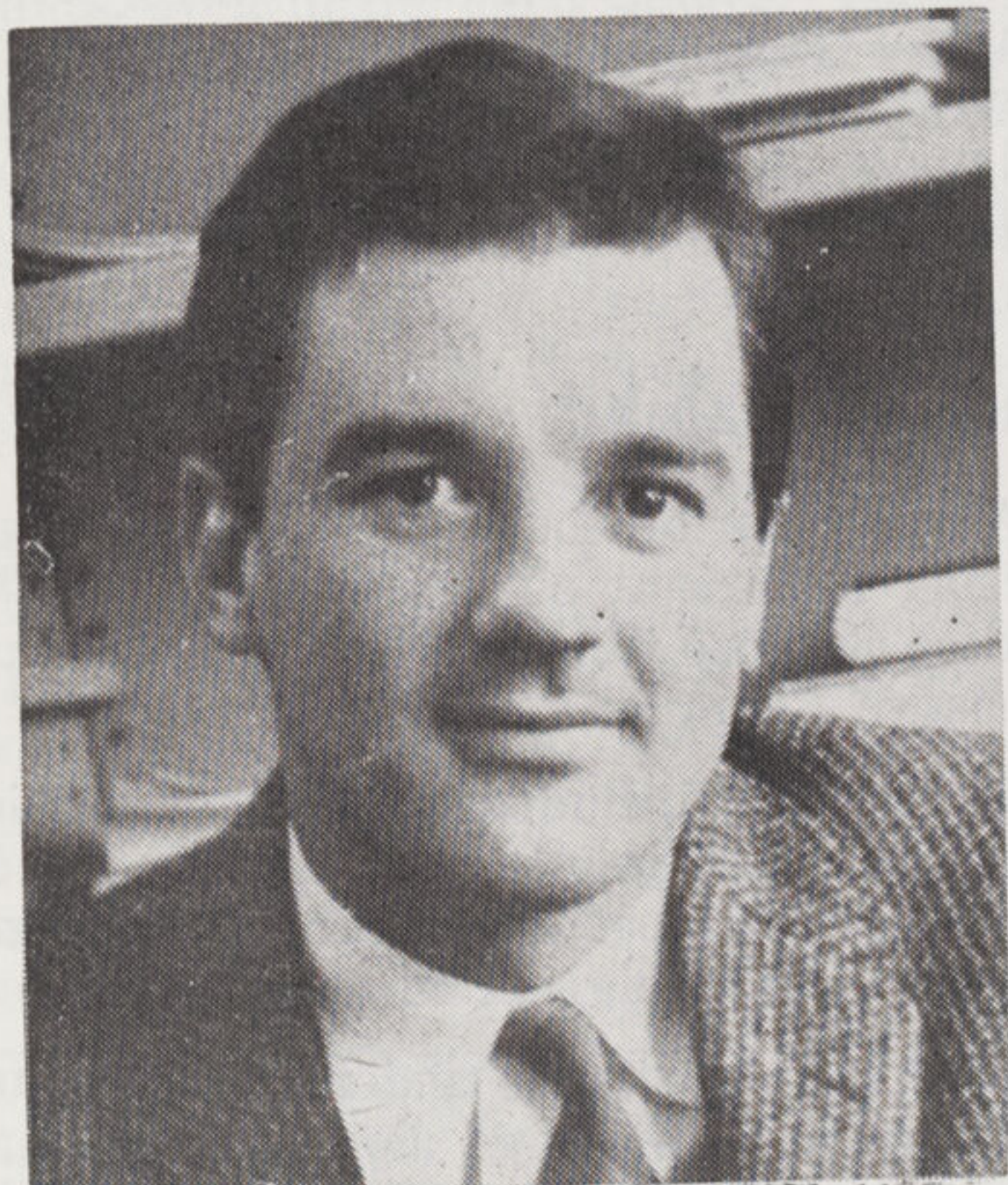
The Interim Report

This is the Law School. January has come and gone. There was no RECORD, but life in the Law School somehow survived. We were here, all of us, classrooms, students, exams, all the vegetable fungus of a legal education.

Even with no RECORD, there were happenings. They should be reported.

Professors, free for a week or two, skipped town and spread their learning throughout the country. General Leach hit the beaches of Washington, casting a broadside on the "Evolution of American Military Policy in the 20th Century." The George Washington University Defense Policy Seminar harkened to his words. This seminar is conducted by two Law School alumni, Ramsay D. Potts, LL.B., '48, and Timothy W. Stanley, LL.B., '53.

Other professors did other things. While students faced his Accounting grapeshot,



Arise, Ladies

Professor David R. Herwitz married Mrs. Carla Barron Cowett of New York. Now there are two legalists named Herwitz. The bride, like the groom, is a graduate of the Law School.

While students poured over their notes, those with spouses sent them trotting to a

gathering of the Harvard Law Wives. They met and were inspired. The inspirer was Assistant Professor Derek Bok. The subject (as construed): Arise, Law Wives, Get a Job! At the conclusion, many determined females left the room, their jaws set. Another Bastille is in the air.

There were the law students themselves, the second and third year variety, the hard-



Hit the Beaches

ened crew. Finals were approaching and finals came, sticky as ever. Even the veteran test-takers busily examined their papers, trying to convince themselves they were in the right rooms. It was no use. It was all very clear. Clearly confusing.

Yet, even with this, not all has been the direct grist for the mill. Other things have been ground and grounded.

The Blackacre Company and its six hardy partners failed in their bid to buy Ellis Island for twenty dollars. The letter of refusal was curt.

The library? Still standing. No one has thought of the bomb as yet. Pipe, powder, a clock. The library, land of muck and homily. Even so, mighty Langdell is still the beacon,



January Call For One And All

and its beckoning none can refuse, though some get lost in the tunnel.

On the morning of January 23, the last day of finals dawned. Those who were about to write went to Harkness Commons for a cup of Harkness "coffee." It was severe, but it was encouraging. Students were giving even odds the exams would not be worse.

Came the Accounting exam. Everyone knew that it dealt with keeping books in some sort of logical order. Debits, credits, a mere matter of figures. But someone forgot to tell the professors. Where were those debits and credits? It was a very cold, grey, bitter dawn.

With the evening of January 23, the Tempest, but no tea pots. Everyone attended a party. Everyone. The adage, revised, was proven. *Cessante ratione, cessant ipsa studia.*

The next day and the reality was back. Wheels again turned in Austin Hall. Langdell Library struggled and shuddered toward the approach of spring Ames and Williston. Professors again anticipated unwary strag-

glers. And there were the first year students. These poor souls have been awaiting practice exams. Touch one of them unexpectedly and they will orbit, muttering "entail in an estate tail male" on the way up. They are still going.

The RECORD has resumed publication.

Cardozo Exhibit

A collection of books and manuscripts reflecting important events in the life of Mr. Justice Cardozo is presently on display in the Treasure Room in Langdell Library.

The exhibit includes manuscript opinions, photographs of people important in the Justice's life, and periodicals reflecting significant events during his career.

Cardozo's illustrious undergraduate career at Columbia is featured along with glimpses into his two years spent at Columbia Law School in the days before the case method.

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FEATURES SECTION

Problems of Arms Control

By LOUIS B. SOHN

In a few weeks the negotiations will start again between the West and the Soviet bloc on arms limitation and control. The basic issue which faces the negotiators is the relationship between reduction of armaments and the amount of supervision needed to ensure that both sides fulfill their duties in good faith.

The American proposals put emphasis on strict control from the very beginning, the Soviet proposals envisage full controls only at the end of the disarmament process. The principal current plans envisage a reduction of armaments by stages, either by percentages (by 10, 25 or 33 per cent in each stage) or down to specified figures (e. g., to 2,100,000 in the first stage, to 1,700,000 in the second stage, etc.). This approach requires, according to the Western proposals, almost complete control over the whole territory of the participants, even in the early stages. The Soviet group objects that in these plans the amount of control is not proportionate to the amount of disarmament and that, especially in the beginning, 90 per cent of controls would accompany 10 per cent of disarmament. On the other hand, the idea that only limited controls will accompany the crucial early stages of arms reduction is unacceptable to the West.

Third Solution

The question has arisen, therefore, whether there is a third way to solve this problem. In this connection, it might be useful to explore a suggestion that reduction of armaments should be made by territorial rather than quantitative stages. This approach

Professor Louis B. Sohn, LL.M., Harvard, 1940, has been the International Law Editor for the American Bar Association Journal, and he took part in the San Francisco Conference which drafted the Charter of the United Nations. He is the author of Cases on World Law, 1950; Cases on United Nations Law, 1956; (with G. Clark) World Peace Through World Law, 1957. At the Law School, he teaches United Nations Law and other courses in the international field.

would require that in each stage the provisions on arms reduction and control should be extended simultaneously to a specified part of each nation's territory, the amount of control being thus more closely proportionate to the amount of arms reduction.

Under this method of arms control, complete demilitarization of a particular part of the territory of each participant would be accompanied by complete control over the



Professor Sohn

demilitarized territory. By successive stages, one part of the territory after another, disarmament and control would be extended simultaneously to the rest of the territory of all the participants.

It may be noted that, in connection with the Western proposals for guarantees against a surprise attack, the United States has made proposals for aerial inspection and other controls over specified territories of the United States and the N.A.T.O. countries on the one hand, and of the Soviet Union and other members of the Soviet bloc on the other hand. The Soviet Union rejected these proposals on the ground that they envisaged inspection without disarmament. This excuse would not be available if the Western Powers could propose, simultaneously, complete disarma-

ment and complete inspection, starting with one part of each nation's territory and extending slowly to the rest of it.

Territorial limitations have also been envisaged in various proposals for disengagement, especially in those relating to disarmament zones in Central Europe. They were rejected principally on the grounds of discrimination against Germany and of perpetuating the division of Germany. These objections could not be raised with respect to proposals which would be applicable equally to all States.

Equal Application

The suggested method of progressive territorial demilitarization cannot be discriminatory; it must apply equally to all States. But to simplify the explanation of this approach, the following analysis will be confined primarily to the United States and the Soviet Union. Once an equitable method is developed for them, it should not be too difficult to apply it to other States as well.

There are various ways of approaching territorial demilitarization and their relative merits will have to be carefully considered. The following suggestions are only submitted as illustrations of some of the possible approaches.

Assuming that we consider the four-year period proposed by the Soviet Union as too short, and would prefer at least a six-year period, the territories of the United States and the Soviet Union could be divided, by agreement, into six equal parts, and over a period of six years both disarmament and control would be introduced to one part after another. In the first year, all arms and military installations in the first disarmament zone would be destroyed or surrendered to the United Nations; all factories in that zone would have to cease manufacturing new weapons; all activities in the field of nuclear energy would be subject to a United Nations control; and the military forces in the zone would be reduced to the level needed for the maintenance of internal order. This process would be extended in the second year to the second zone, and so on.

While it is conceivable that in the first stages a large amount of equipment and military personnel would be simply moved into zones not subject to control, with the progress of disarmament the room for transfer would be so diminished that a State would

not be able to do this. In any case, it might be possible to institute some more limited controls even in the areas not subject to disarmament for the purpose of avoiding such transfers of military equipment and personnel. The controls proposed long ago by the Soviet Union with respect to road injunctions, railroad centers, and airports might provide sufficient guarantees against such transfers.

Alternatively, each State might be obliged to submit a list of all its military forces; military installations; stocks of armaments and nuclear materials; and facilities for the production of armaments and nuclear materials; together with a general breakdown of its forces, materials and facilities by the six zones. While there would be no general check on the accuracy of the information thus supplied, both sides might permit the supervision of the borders between the zones in order to ensure that no forces or materials are moved from one zone to another. Such a limited amount of inspection would not be out of proportion to the amount of disarmament envisaged by these proposals.

Gradual Increase in Zones

If this method of territorial disarmament were used, it might be desirable to start with a relatively small proportion of the territory, and to increase each year the size of the zones in such a way that the whole process could be finished nevertheless in a period of six years. This could be accomplished, for instance, by demilitarizing 5 per cent of a nation's territory in the first year, 10 per cent in the second year, 15 per cent in the third year, 20 per cent in the fourth year, 25 per cent in the fifth year, and the remaining 25 per cent in the sixth year. The process of disarmament here proposed should not extend over too long a period, as there would be a temptation to avoid the restrictions by increasing armaments and facilities for the production of armaments in the territory not subject to control. This temptation would disappear if a State knew that it would lose the new armaments or facilities anyway in a year or so.

Another difficulty might arise with respect to the way in which demilitarization zones should be delimited. One could start perhaps with the zone furthest removed from the nation's capital and proceed through consecutive stages to the zone in which the capital is situated. Secondly, one could start with

the center of the country, i.e., with the zone in which the geographical center of the country is situated, and then proceed, alternately, to zones on the east and west of it until the east and west boundaries of the nation are reached. Thirdly, one could take into account the fact that the nations might want to keep their military forces on the boundaries until the last minute and one could start with a set of concentric circles beginning again at the geographical center of the country and extending, circle by circle, by equal distances towards all the boundaries, until in the last stage the boundary zones would be demilitarized. This last method would, incidentally, result in the gradual increase in the size of zones subject to inspection. But it could be argued that any one of these automatic methods might cause at some point a critical lack of balance between the two blocs and that it might be preferable to let each party choose the parts of the territory which would be subject to demilitarization and supervision. As each party would start with least important areas, and as more important areas would be subjected to demilitarization and supervision in a simultaneous manner, the risk involved would thus be greatly diminished.

Lump All Territories

Instead of devising zones for each State, it might be preferable to lump together all the territories of the parties to the N.A.T.O. and Warsaw treaties, and to start disarmament simultaneously from the lines of division in Europe and the Bering Sea. Thus the

area between the East-West boundary in Europe and the Atlantic boundary of Portugal would be divided into six zones simultaneously with the area between the East-West boundary and the Ural boundary of European Russia. Similarly, the area of Canada and the United States (including Alaska) on the one hand, and of Soviet Asia from the Urals to the Bering Sea, on the other hand, would be divided into six zones. Disarmament would start simultaneously in all four groups of territories, starting respectively with the zones which are near to the East-West line in Europe and the Bering Sea.

The areas of other countries would be divided in a similar fashion into six zones, taking into account the rivalries between various States and groups of States (e.g., between India and Pakistan, or between Iraq and the United Arab Republic).

There is no doubt that each method of disarmament involves some risks, and territorial demilitarization is not free from them. It may be hoped, however, that this method might be refined to the point where the twin dangers of evasion and of disturbing the existing military balance would be minimized. Once this is accomplished, the territorial demilitarization method would seem to have a better chance of acceptance than other disarmament plans, as it is the only method in which control and disarmament go hand in hand. The controversy between the United States and the Soviet Union over the crucial question of priority of controls over disarmament would thus be avoided.

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Book Review

Charles P. Curtis: LAW AS LARGE AS LIFE, Simon and Schuster, New York, 1959

We have in *Law as Large as Life* another contribution to the great and on-going public debate on the proper scope of judicial review. This contribution originated as the Gaspar G. Bacon lectures for 1958 at Boston University—the purpose of which lectureship is to stimulate a study of the Constitution of the United States, its history, doctrines, and implications.

The book, says the author, takes its “departure from a bearing on a headland in Hand’s lectures”^{*}—which headland is the proposition that, setting aside any doctrine of natural law in the sense of Aquinas or Jefferson, the Supreme Court has no authority to hold any act of Congress or any State unconstitutional and that the only warrant for the doctrine of judicial supremacy is that of necessity.

From this departure, Mr. Curtis moves to a discussion of what he terms a “natural law for today” in a context of quotations gathered from writers in many fields. This natural law for today, far from being the natural law of St. Thomas or of Jefferson, turns out to be a consensus or a generally accepted core of values of which, Curtis asserts, the Supreme Court seems to have taken upon itself to be the prophet. A contrast is made between this prevailing view and that

^{*} Given as the Holmes lectures in 1958 at the Harvard Law School and published by the Harvard University Press as the *Bill of Rights*, 1958.

of Mr. Justice Black on the role that the court should assume with regard to the fourteenth amendment and its application to the states. Justice Black is characterized by Mr. Curtis as being a true Jeffersonian in his insistence that the fourteenth amendment makes the Bill of Rights directly opera-



Charles P. Curtis

tive on the states, in his exultation of the first amendment, in his high opinion of the jury as a tribunal of justice, and in his irreverence for the past. This section is closed by the question: “Which do you choose? A judicial version of Natural Law for Today or our eighteenth-century Bill of Rights?”

At this point, the author comes back to his “headland”. In rejecting both of the alternatives contained in the question immediately

above, he calls attention to the fifth clause of the fourteenth amendment. “The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.” It is this clause that the author sees his solution to the problem that troubled Hand. He agrees with Hand in rejecting a code of paramount law but he thinks that this can be replaced by a paramount legislature (Congress) as provided in the fourteenth amendment.

Mr. Curtis believes that Congress can and should take the responsibility of declaring the clear-cut language which is to be the standard of due process, equal protection, etc. and that it should attack this job with the same enthusiasm and passion that the court has had in doing this job in the abdication of Congress. He would go so far as to say that Congress should enact a Uniform Code of Criminal Procedure for state and federal courts in stating what due process is to be. Of course, the author concedes that the Supreme Court would still be a minor prophet of natural law in that Congress can only deal in generalities in enacting statutory standards. Only by having Congress take the responsibility given it in the fourteenth

Editor's Note:

The author of the book, a graduate of Harvard College, A.B. '14, and the Law School, L.L.B. '17, was born in 1891 and died last December.

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amendment can the court properly perform its two roles — those of (a) being the umpire among the departments of government to prevent the failure of the whole undertaking and (b) being a communal mentor or third legislative chamber by leave of a responsible Congress. Only in this way will the Supreme Court preserve its prestige and thus successfully perform both of its functions.

The Court, according to Mr. Curtis, has become an inferior legislature — carrying on where Congress has left off in refusing to act responsibly. This is evidenced by the Court's certiorari procedure. The author decries the time wasted by the Justices' publishing their legislative debates when Congress could have made the issue clear by enactment of proper legislation.

One wonders how much the author is justified in the confidence that he seems to have in the legislative body of this country to define in a clear-cut way what the standards under the fourteenth amendment are to be. Should such standards be embodied in a statu-

tory form especially since they rest so much on consensus as Mr. Curtis recognizes? As a practical matter, it seems doubtful whether the Congress could ever act responsibly with regard to an issue such as segregation in the schools. It would seem that the consensus would be best determined by as non-partisan and dispassionate a group as possible. Further, one wonders whether the enactment of general statutes by Congress concerning the standards to be applied under the fourteenth amendment would give the court much help beyond that which they get from precedent now.

Comment

One further comment should be made with regard to the very fine supplement containing short selections from writers in many fields on the various subjects touched in the main body of the exposition. Of particular interest is the long series of selections dealing with what the author terms the "natural law for today". This idea is seen to be approached variously through this ideas of consensus

(Benjamin Wright), public philosophy (Lippmann), immanence (Whitehead), symbolism (C. S. Pierce and Whitehead), patterns (Ruth Benedict), folkways (Dorothy Lee and Klukholm), and language (Klukholm, Ullmann, Sapir).

— E. Dolven

Letters to the Editor

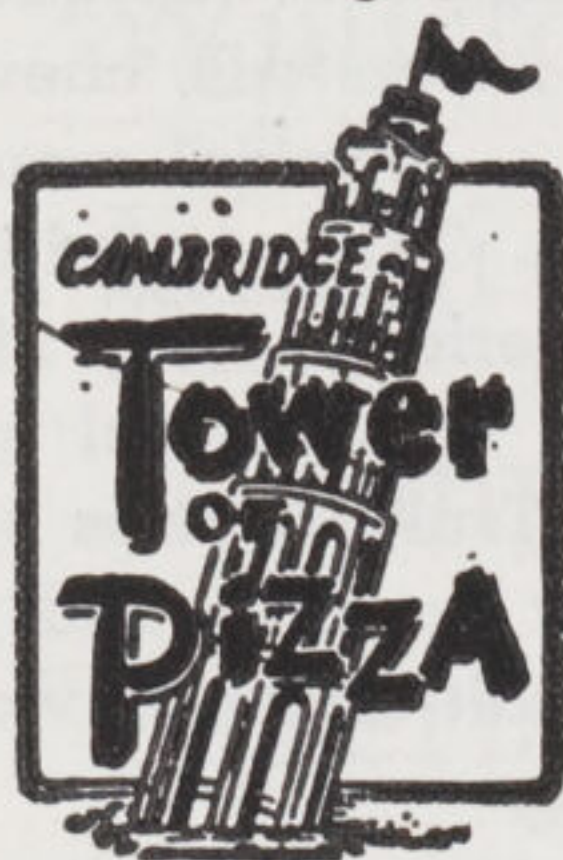
To The Editor:

The review of my book, *Power Unlimited*, the letter concerning it by J.D. Hartwig, and the reviewer's reply by "Manley" have come to my attention.

Although I am still emotionally spent I think I should perhaps add one more to the "waves of emotion" which I used instead of "timbers of reason" in order to bridge the gap between the facts of union violence and my proposed remedies.

Emotionally speaking, I should like "Manley" and the readers of your publication to look (or perhaps I should say, in "Manley's" case,

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to look *again*) at the book, and especially at the analytical portion — pages 185-304. Pages 1-181 can not accurately be characterized as either emotional or unemotional; they are simply factual and must therefore be evaluated as either accurate or inaccurate accounts of the things the McClellan Committee uncovered.

But it was my intention in the analytical portion to engage in a careful and painstakingly rational examination of the causes and cures of the unseemly conduct which the McClellan Committee revealed. I believe that the character of that portion is fairly well represented by these sentences, from pages 283-84: "The normal American penchant for quick indignation and almost as rapid forgetfulness must be eschewed. . . .Punitive legislation is always bad legislation. . . . The job before us, as Americans, is to ponder carefully on the kind of country we want, and then to judge whether the violent and monopolistic conduct of trade unions is acceptable. . . .Punitive laws enacted in a spirit of retaliation for the evils disclosed in the McClellan Record would be undesirable on all counts. . . .The nation's true interest lies in re-instituting with vigor the rule of law."

With what little energy I have left I should like to register an emotional objection to Manley's fantastic distortion of the nature and character of my book.

Emotionally and Sincerely yours,

Sylvester Petro
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